BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Application T-11627, Douglas County	)))	FINAL ORDER APPROVING AN ADDITIONAL POINT OF DIVERSION

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicants

CHESTER A. SMITH, JR. AND ALTA M. SMITH
1137 AUTUMN LANE
GLENDALE OR 97442

Findings of Fact

1. On June 26, 2013, Chester Smith Jr. and Alta Smith filed an application for an additional point of diversion under Certificate 58504. The Department assigned the application number T-11627.

2. Notice of the application for transfer was published on July 2, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

3. On April 7, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11627atter of Transfer Application T-11627 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 8, 2014 for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

4. On May 12, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11627atter of Transfer Application T-11627 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on May 20, 2014, and in the News Review (Douglas County) newspaper on May 19 and 26, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices

5. The portion of the right to be transferred is as follows:

Certificate: 58504 in the name of CHESTER A. SMITH (perfected under Permit S-5364)
Use: IRRIGATION OF 25.2 ACRES
Priority Date: JANUARY 9, 1922
Rate: 0.31 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre.
Source: COW CREEK, tributary to the UMPQUA RIVER*

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	5 W	WM	19	SE SE	75 FEET NORTH AND 630 FEET WEST FROM THE SE CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	30	SW NW	24.6
32 S	5 W	WM	30	NW SW	0.6

6. Transfer Application T-11627 proposes an additional point of diversion downstream approximately 8,800 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	6 W	WM	25	SW NE	370 FEET NORTH AND 1965 FEET WEST FROM THE E¼ CORNER OF SECTION 25

7. The Department has determined that the water use subject to transfer, Certificate 58504, inadvertently has identified Cow Creek as tributary to the Umpqua River*, when in fact, it clearly is tributary to the South Umpqua River. This diversion on Cow Creek is located at River Mile 47 on the Department's Basin Map, and clearly shows up on the adjudication map as well. Both being tributary to the South Umpqua River. Cow Creek flows in a clockwise direction from this diversion and dumps into the South Umpqua River near the town of Riddle, Oregon. The Department concludes that the water right of record should be corrected to describe the correct name of the river that Cow Creek is tributary to, that being the South Umpqua River.

8. Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

9. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11627.

11. The proposed change would not result in enlargement of the right.

12. The proposed change would not result in injury to other water rights.

Conclusions of Law

The additional point of diversion proposed in Transfer Application T-11627 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of diversion proposed in Transfer Application T-11627 is approved.

2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 58504 and any related decree.

3. Water right Certificate 58504 is cancelled. A new certificate will be issued describing that portion of the right NOT affected by this transfer.

4. The quantity of water diverted at the new additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.

5. Water use measurement conditions:

    a. **Before water use may begin** under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the **new** point of diversion.

    b. The water user shall maintain the meter or measuring device in good working order.

    c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.

6. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

   The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.

8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 14 day of August 2014.

Dwight French, Water Right Services Administrator, for
Director
Oregon Water Resources Department

Mailing date: AUG 18 2014